

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

NATIONWIDE MUTUAL
INSURANCE COMPANY, as
subrogee of Marmalade Skies, LLC,

One Nationwide Plaza
Columbus, Ohio 43215

Plaintiff,

v.

ESSEX HAND-CRAFTED WOOD
PRODUCTS, LLC,

241 Forest Grove Road
Amissville, Virginia 20106

Defendant.

Civil Action No.: 3:20-cv-50

JURY TRIAL DEMAND

COMPLAINT

Plaintiff Nationwide Mutual Insurance Company ("Nationwide"), by and through its undersigned attorneys, and upon information and belief, avers as follows:

PARTIES

1. Nationwide is a corporation organized under the laws of Ohio, with a principal place of business located at One Nationwide Plaza, Columbus, Ohio. At all times material hereto, Nationwide was authorized to issue policies of insurance in the Commonwealth of Virginia.

2. Defendant Essex Hand Crafted Wood Products, LLC, ("Essex") is a company organized under the laws of the Commonwealth of Virginia, with a principal place of business located at 241 Forest Grove Road, Amissville, Virginia. Upon information and belief, the members of Essex are citizens of Virginia. At all times

material hereto, Essex was engaged in the business of woodworking, staining, and related activities.

JURISDICTION AND VENUE

3. The jurisdiction of this court is proper pursuant to 28 USC § 1332 as this action is between citizens of different states and the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.

4. Venue is proper in this district pursuant to 28 USC § 1391 as the events or omission giving rise to the claims at issue occurred within this district and defendant is subject to personal jurisdiction with the district.

FACTUAL ALLEGATIONS

5. At all times material hereto, Marmalade Skies, LLC, (“Marmalade Skies”) owned the real property located at 14832 Lee Highway, Amissville, Virginia (the “Subject Property”).

6. At all times material hereto, Nationwide issued a policy of insurance, No. ACP BPHM2403410569, which provided coverage for Marmalade Skies’ property and other interests at the Subject Property.

7. At all times material hereto, Essex, leased and utilized the Subject Property in connection with its business activities of woodworking, to include staining.

8. At all times material hereto, Essex, was required to maintain comprehensive public liability and property damage insurance on the property to provide coverage for both the lessor and lessee.

9. During the course of Essex’s work, sawdust, stain-laden materials, and/or other items that were subject to the risk of spontaneous combustion were improperly stored and/or discarded.

FRANKL
MILLER
WEBB &
MOYERS.

10. On or about August 31, 2018, due to improper storage and/or disposal of materials, a fire originated and caused substantial damage and other losses to the Subject Property, in an amount in excess of \$136,559.00.

11. Given the extensive fire, smoke, and water damage, Marmalade Skies submitted a claim to Nationwide.

12. Pursuant to the terms and condition of its policy of insurance, Nationwide made payments to Marmalade Skies, in an amount in excess of \$136,559.00.

13. In accordance with the common law principles of legal and equitable subrogation and the terms of the Policy, Nationwide is subrogated to the rights of its insured, to the extent of its payments.

COUNT I – NEGLIGENCE

14. Nationwide incorporates by reference the preceding averments as though set forth at length herein.

15. Essex owed a common law duty not to create a hazardous condition and cause a fire at the Subject Property, which it breached.

16. The fire and resulting damages were caused by Essex's carelessness, negligence, gross negligence, recklessness, and/or negligent actions, by and through its agents, employees, servants, representatives, and/or workmen, acting within the course and scope of their employment, as follows:

- a. Improperly and unsafely storing or disposing of items that could spontaneously combust;
- b. Disregarding and/or ignoring warnings on product containers regarding the hazards presented by the improper use and/or disposal of products and/or supplies;

- c. Failing to properly provide and/or follow adequate safety rules and regulations at the Subject Property;
- d. Failing to take proper and adequate precautions to protect the Subject Property from the hazards of fire;
- e. Failing to observe applicable statutes, rules, regulations, and/or ordinances including, but not limited to, applicable fire codes, for dangerous items, including those subject to spontaneous combustion;
- f. Causing or allowing the fire to occur; and
- g. Otherwise failing to use due care under the circumstances, as may be revealed in the course of discovery.

17. By reason of the above negligence and/or gross negligence, the fire occurred and Marmalade Skies suffered severe and extensive damage.

WHEREFORE, Nationwide respectfully requests judgment be entered in its favor and against Essex, in an amount in excess of \$136,559.00, together with interest, costs, and such other and further relief as the Court deems proper.

COUNT II – BREACH OF CONTRACT

18. Nationwide incorporates by reference the preceding averments as though set forth at length herein.

19. The fire caused damage and other losses to Marmalade Skies at the Subject Property for which Essex was responsible to insure under the lease agreement.

20. By failing to pay the damages and other losses sustained as a result of the fire, Essex has breached its lease agreement.

21. Essex agreed to refrain from keeping hazardous and flammable materials at the Subject Property.

22. Essex agreed to return the Subject Property at the expiration of the lease term in as good condition as it was at the commencement of the lease.

23. Essex breached the lease agreement by failing and refusing to return the Subject Property in as good condition as it existed at the commencement of the lease.

WHEREFORE, Nationwide respectfully requests judgment be entered in its favor and against Essex, in an amount in excess of \$136,559.00, together with interest, costs, and such other and further relief as the Court deems proper.

NATIONWIDE MUTUAL INSURANCE
COMPANY, as subrogee of Marmalade Skies,
LLC

/s/ Jason Guy Moyers (VSB No. 38673)
FRANKL MILLER WEBB & MOYERS, LLP
Post Office Box 4126
Roanoke, Virginia 24015
(540) 527-3516
(540) 527-3520 (facsimile)
E-mail: moyers@fmwm.law

Counsel for Plaintiff

FRANKL
MILLER
WEBB &
MOYERS